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To Whom It May Concern:

We are writing this letter to submit comments on the Notices of Proposed Rule Making (NPRM) for 23 CFR Parts 450, 771, 1410, 1420, and 1430 and 49 CFR Parts 613, 621, 622, and 623 regarding the National Environmental Policy Act and Related Procedures for Transportation Decision-making, Protection of Public Parks, Wildlife and Waterfowl Refuges, and Historic Sites; and Statewide and Metropolitan Transportation Planning.

To formulate these comments, the Maine Department of Transportation (MDOT) has participated in a number of meetings with the American Association of State Highway and Transportation Officials' (AASHTO) Standing Committees on Environment and Planning, the Federal Highway Administration (New England states), and most recently, the Northeast Association of State Transportation Officials (NASTO) in association with the Environmental Council of States (ECOS).

First and foremost, we commend FHWA and FTA on their earnest effort to articulate and improve the environmental and planning processes through better coordination and integration. We believe this approach will lead to improved performance, streamlining and a truly cooperative state/federal partnership. We are, however, concerned with a number of missed opportunities raised by the NPRM's and offer the following comments, developed in concert with AASHTO and NASTO/ECOS:

Proposed National Environmental Policy Act and Related Procedures for Transportation Decision-making Regulations

In the context of Section 1309 of the Transportation Equity Act for the 21st Century (TEA-21), MDOT offers the following thoughts:

- 1) Expediting the NEPA process for large, complex projects. The proposed regulations do not provide assurance that the NEPA process will be expedited for large, complex projects requiring the preparation of an environmental impact statement (EIS). There is no reliable mechanism for ensuring consistent resource agency involvement in the



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planning and environmental processes. In addition, there is no mechanism for ensuring timely agency comments and timely resolution of interagency disputes. While much progress in this area can be made through cooperative efforts on the regional and state levels, the regulations could do more to strengthen the regulatory framework for these efforts.

- 2) Expediting the NEPA process for small, uncontroversial projects. The proposed regulations do not provide assurance that the NEPA process will be expedited for small and uncontroversial projects, that is, the vast majority of projects that can be approved with an environmental assessment (EA) or categorical exclusion (CE). The coordinated review process developed for EIS projects would not be the most effective tool for expediting smaller-scale projects. In particular, proposed Section 1420.303(c) requires a notice of availability to be distributed to affected units of federal, state, and local government for every CE, EA, and Section 4(f) evaluation. In most states, there are literally hundreds of CE's approved every year. This requirement unnecessarily increases the paperwork burden on State DOT's. We recommend maintaining existing procedures for providing notice of transportation projects. MDOT encourages the addition of new categories of projects to the CE list.
- 3) Preserving the principle that NEPA is procedural, not substantive. The proposed regulations contain several provisions that could be interpreted to impose new substantive requirements. These requirements would create new compliance burdens and potentially weaken the role of the State DOT's in transportation decision-making. These provisions should be revised to avoid burdening the NEPA process with new substantive requirements.
- 4) Reforming Section 4(f). The proposed regulations re-number and re-organize the existing Section 4(f) regulations, without proposing significant reforms. The Section 4(f) regulations should be revised to improve overall processing and to avoid the existing duplication with Section 106 of the National Historic Preservation Act.

Proposed Statewide and Metropolitan Transportation Planning Regulations

The statewide planning provisions in TEA-21 reflect a balance between achieving a degree of national consistency while at the same time preserving substantial flexibility for individual states. The proposed regulations potentially affect this careful balance, by introducing new requirements that reduce states' procedural flexibility, reduce their decision-making authority, and increase their compliance burdens. These provisions should be revised to avoid burdening the planning process with new substantive requirements. MDOT strongly supports proposed Section 1420.21's elimination of planning and NEPA process duplication, and the incorporation and utilization of planning analyses, studies, documents and other sources of information into the NEPA process.

Proposed Environmental Justice Provisions

MDOT supports efforts to ensure compliance with Title VI of the Civil Rights Act and with all non-discrimination statutes. However, we believe the existing legal framework for preventing and remedying discrimination is working well. In the absence

of any evidence of a systemic flaw in the current system, we see no reason to change that system and replace it with a new set of requirements. We have concerns that the particular approach reflected in the USDOT's proposed planning regulations would create new burdens and uncertainty for State DOTs and MPO's. Therefore, MDOT urges FHWA and FTA to maintain the existing regulations relating to Title VI compliance, as reflected in 23 C.F.R. 450.

Proposed Conformity Requirements

MDOT opposes adding the requirements to produce an interim plan and TIP as the basis for advancing projects that are eligible to proceed under a conformity lapse, Sections 1410.322(g) and 1410.324(p). We feel that this addition is unnecessary and contrary to existing rules. The current Transportation Conformity Rule, 40 CFR Parts 51 and 93, Section 93.126, Exempt Projects, states "... highway and transit projects of the types listed in Table 2 of this section are exempt from the requirement to determine conformity. Such projects may proceed toward implementation even in the absence of a conforming transportation plan and TIP..." Adding an additional layer of requirements to allow exempt projects to proceed could, delay funding of a project that is beneficial to the environment such as public transit, cause further environmental damage, potentially undermine positive efforts, and affect transit dependent areas of the community. It could also delay a much needed hazard elimination project. The recent MOU requires the FHWA and EPA to get together prior to a conformity lapse and identify non-exempt projects that would be affected by the lapse. Why then require the state and MPO to publish an interim plan and TIP? It appears to be redundant when all the non-exempt projects have been identified and accounted for. MDOT feels that this change to the rules may delay projects that should otherwise go forward and add unnecessary additional steps to the conformity process.

Need for Transition and Guidance

As proposed, these regulations take effect as soon as the final regulations are issued, allowing no time for a transition period. The lack of any transition period or "grandfathering" could significantly delay planning and NEPA efforts already in progress. MDOT strongly urges FHWA and FTA to provide a reasonable time for State DOTs to become accustomed to the new regulations before they become effective.

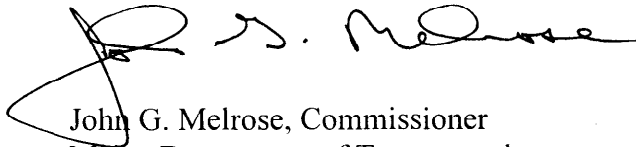
One important factor affecting the transition period is the availability of guidance. Overall, MDOT supports the use of guidance over the use of prescriptive regulations. However, we are also concerned that excessively prescriptive guidance can be more burdensome than regulations because guidance, unlike regulations, is not required to go through a notice-and-comment process. Therefore, MDOT urges FHWA and FTA to develop guidance cooperatively with the State DOT's and MPO's, as well as other stakeholders, and also urges FHWA and FTA to issue best practices and informational examples, rather than prescriptive guidance that has the effect of regulations.

In closing, we feel the best approach is to carefully consider and address the numerous comments regarding these proposed regulations and then issue a revised notice

of proposed rulemaking, with another opportunity for public comment, before finalizing any new rules. MDOT recommends this option reluctantly, but we have concluded that revising and reissuing the proposed regulations is the best way to achieve the needed streamlining reforms in the environmental and planning review processes for federally aided transportation projects.

We thank you for this opportunity to offer constructive comments. If you have any questions regarding this input, please contact Alan Stearns or Duane Scott of the Office of Environmental Services at 207-287-5735 (TTY 207-287-3392).

Sincerely,



John G. Melrose, Commissioner
Maine Department of Transportation

JGM:ds

cc: Carl Croce, MDOT/PRCS
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